

This letter provides references for how to properly document a drop-shipment. See also 86 Ill. Adm. Code 130.225. (This is a GIL.)

September 13, 2006

Dear Xxxxx:

This letter is in response to your letter dated June 19, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC would like to request a private letter ruling regarding sales tax classification for drop shipment transactions. In such a situation, who is responsible to [sic] paying sales tax, what form of documentation must be kept by the seller, and are there any audit risks.

Facts:

ABC is a foreign-owned electronics company headquartered in STATE and doing business in 32 states including Illinois. We are a registered business in the state and pay our sales and use tax monthly. From our understanding of Illinois sales and use tax regulation, [sic] all sales to a customer who cannot provide a valid Illinois resale certificate must include sales tax regardless of their reseller status with other states if the merchandise is shipped into Illinois. However, our customers are disputing our obligation to charge sales tax.

The current situation is as follows:

ABC sells tangible personal property to XYZ (a STATE2 based company) who then instructs ABC to drop ship the goods to their customers located in Illinois. The commercial invoice issued to XYZ by us, clearly reflects a separate bill-to customer and ship-to destination. The invoice is sent to XYZ in STATE2, but the merchandise is

shipped to their customer in Illinois. XYZ's Illinois customers are resellers, end-users, and exempt hospitals and/or organizations. XYZ's argument is that since they are reselling the items to customers in Illinois, the transaction should be exempt from sales tax. XYZ cannot provide a valid Illinois resale certificate because they do not meet the nexus requirements to obligate them from registering with the state. XYZ does not have a business location nor solicit sales in Illinois. However, ABC as a registered business must collect and pay sales tax on all taxable transactions monthly.

In this third party drop shipment situation,

1. Who is responsible for paying sales and use tax to the state for the transaction?
2. Should ABC collect sales tax from XYZ subject to Illinois sales tax?
3. Can XYZ provide a STATE2 resale certificate in lieu of an IL resale certificate to claim sales tax exemption?
4. Is it required by law for ABC to collect sales tax from XYZ even though they cannot collect sales tax from their customer? If so, please provide a regulation code if one does exist.
5. If the customer in IL is also a reseller or exempt party, then can ABC keep on file a properly executed IL resale certificate from the third party to document the drop shipment transaction? Is there any audit risks [sic] involved, if ABC is audited by the state?
6. How can XYZ claim sales tax exemption besides having to register with the state?
7. How should this transaction be handled in order for all involved parties to be in compliance with IL sales and use tax regulations?

ABC is not under any audit examinations from the state nor have [sic] requested a similar ruling in the past. A detailed ruling by the state will greatly enhance our business decision making process and keep our company in compliance with Illinois sales and use tax regulations. If you have any questions regarding this request, please do not hesitate to contact INDIVIDUAL.

DEPARTMENT'S RESPONSE

For general information regarding drop shipments and resale certificates we refer you to the Department's regulations regarding Drop Shipments at 86 Ill. Adm. Code 130.225, and Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale at 86 Ill. Adm. Code 130.1405. We also suggest you take a look at letter ST 03-0179-GIL which includes a description of how to properly document drop shipments. The Department's regulations and letters are available on the Department's website.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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